

October 4, 2004

Ms. Marlene Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S. W.  
Washington, DC 20554

In the Matter of: Lifeline and Link-Up

WC Docket No. 03-109

Dear Ms. Dortch:

Enclosed for filing please find Reply Comments of the National Association of State Utility Consumer Advocates on the Further Notice of Proposed Rulemaking.

If you have any questions, please feel free to contact me.

Sincerely yours,

Barrett C. Sheridan  
Assistant Consumer Advocate

Enclosure

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	<b>WC Docket No. 03-109</b>
	)	
<b>Lifeline and Link-Up</b>	)	

**REPLY COMMENTS OF  
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES  
ON THE FURTHER NOTICE OF PROPOSED RULEMAKING**

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Dated: October 4, 2004

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In the Matter of )  
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<sup>3</sup> 47 C.F.R. § 54.409(b) (eff. July 22, 2004).

federal Lifeline rules by adoption of specific objectives, so as to provide better guidance to carriers as to how to meet existing advertising and promotion requirements.

NASUCA will limit these reply comments to the points raised by other commenters regarding the merits of moving the income-based eligibility criterion to 150% of “FPG”. On the issues of advertising and outreach, NASUCA refers the FCC to the NASUCA Comments.

## **II. THE FCC SHOULD ACT NOW AND SET THE INCOME-BASED CRITERION AT 150% OF FEDERAL POVERTY GUIDELINES**

Briefly, NASUCA finds several themes in the comments filed by other parties. The Iowa Utilities Board and Maine Public Utilities Commission support increasing the income-based eligibility criterion of 135% of FPG to 150% of FPG, recognizing the fundamental fairness of treating consumers of like income the same, whether or not they participate in public benefit programs like LIHEAP. In contrast, the Florida Public Service Commission, Verizon and Sprint urge the Commission to delay action – not because delay will benefit low income consumers in need of Lifeline support – but based on concerns of administrative efficiency, impact on the federal USF, or the need for more study and experience under the new Lifeline program changes.

NASUCA welcomes and agrees with the positions of the Iowa Utilities Board and Maine Public Utilities Commission. Adoption of 150% of FPG as the income-based criterion will promote fair treatment between those low income consumers who qualify based on program participation or income. Additionally, as explained in the NASUCA Comments and supporting affidavit of Roger Colton, adoption of the higher income measure is necessary to provide low income consumers with affordable telephone service. Low income consumers with income in the range between 135% and 150% of FPG may not have more resources available to pay for and afford telephone service. In order to promote universal service and affordable telephone service, the FCC should adopt 150% of FPG as the income-based criterion.

NASUCA disagrees with the Florida Commission, Sprint and Verizon that a decision by the FCC on this issue is premature. Given that the FCC implemented changes to the Lifeline program and set the question of the final measure of the income-based eligibility criterion out for further comment and rulemaking, it is self-evident that there would be little time for experience under the new Lifeline programs. As a practical matter, the delay urged by these commenters will only hurt those particular consumers whom the FCC is concerned with and who should not be unnecessarily treated differently or shut-out from Lifeline assistance. The NASUCA Comments and affidavit of Mr. Colton, as well as comments filed regarding the Joint Board Recommended Decision,<sup>4</sup> provide the FCC with the evidentiary record and policy reasons to conclude this further rulemaking with the adoption of the 150% of FPG measure. Delay will only hurt those consumers who would benefit from adoption of the 150% of FPG measure as Lifeline support is not provided retroactively.

Delay for administrative reasons is an equally untenable argument. As noted in the NASUCA comments, the FCC has already given the default states time to implement the new eligibility criteria and certification standards under the revised Lifeline/Link-Up regulations. Sprint's concern that it should not have to incur the costs of system adjustments more than once is best addressed by prompt action by the FCC to resolve the issues set for further rulemaking, not by delay. Regardless, NASUCA urges the FCC to decide the matter based on how best to advance the goals of universal service, as opposed to the convenience and preferences of carriers.

Verizon, Sprint, and the Florida Commission suggest that the FCC should either delay or decline to adopt the 150% of FPG measure out of concern for the impact of all changes on the

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<sup>4</sup> See, e.g. August 2003 Comments of NASUCA at 6-11; Comments of the United States Conference of Catholic Bishops, Alliance for Community Media, Appalachian People's Action Coalition, Center for Digital Democracy, Consumer Action, Consumer Federation of America, Edgemont Neighborhood Coalition and Migrant Legal Action Program at 3-6; Consumer's Coalition Comments at 1; Texas OPC Comments at 5-6; Public Utilities Commission of Ohio Comments at 9.

size of the federal USF and impact on individual states. NASUCA is keenly sensitive to the fact that expansion of programs supported by the federal USF will result in increased costs to consumers. However, NASUCA does not agree that the FCC should decline to provide to consumers with incomes in the 135% to 150% of FPG universal service support in the form of Lifeline and Link-Up assistance as way to manage the federal USF. As explained in the NASUCA Comments, there are some 742,000 low income consumers who fall in this income range who live without telephone service. NASUCA Comments at 4-5. Many elderly persons living on Social Security fall in this range. *Id.* at 7. The FCC wisely opened this further rulemaking to better understand the face and needs of consumers in this narrow income range. Even assuming, arguendo, that the Staff Analysis estimate of the costs of adopting the 150% of FPG criterion are correct, NASUCA avers that the benefits to consumers and society outweigh the costs. NASUCA Comments at 8.

Sprint and Verizon invite the FCC to measure affordability based solely on who needs Lifeline assistance to obtain telephone service. Their position is inconsistent with the definition of affordability as adopted by the FCC and applied by Mr. Colton for purposes of this further rulemaking. As Mr. Colton notes in his affidavit, the FCC's test for "affordability" includes consideration of whether consumers have enough or the means to purchase telephone service and also whether they can bear the costs of service without serious detriment. Colton Affidavit at 2. The FCC should adopt the 150% of income criterion because it may help the some 742,000 without telephone service identified by Mr. Colton obtain and keep telephone service. The higher income criterion will also help those low income consumers such as the elderly living on Social Security who have telephone service but struggle financially to preserve it.

### **III. CONCLUSION**

The Commission has already taken important steps to broaden Lifeline and Link-Up eligibility criteria to better assist low income consumers in subscribing to and retaining affordable local telephone service. The Commission should complete this process by replacing the interim income eligibility criteria of 135% of Federal Poverty Guidelines with the 150% of FPG measure for the reasons set forth in the NASUCA Comments, the affidavit of Roger D. Colton, and these Reply Comments.

Respectfully submitted,

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